IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.394 OF 2005
IN
WRIT PETITION NO.399 OF 2005

Smt.Pratibha V. Undir ....Petitioner
Versus
The Municipal Corporation of Gr.Mumbai & Anr. ....Respondents

Mr.Manoj Nikose for the Petitioner.
Ms.P. A. Purandare for Respondent No.1.
Mr.U. J. Makhija i/b Mulla & Mulla & C. B. & C. for Respondent No.2.

CORAM : DALVEER BHANDARI, C.J. &
S.J. VAZIFDAR, J.
DATE : 29TH AUGUST, 2005.

P.C. :

1. By this Notice of Motion, the Petitioner seeks to put up a temporary shed of tarpaulin or plastic over the exposed portion of the first floor structure of the Petitioner's house which is the subject matter of the Petition.

2. The Respondent – Corporation had already commenced and substantially completed the demolition of the said structure. By

various interim orders, the Respondents were in fact permitted to remove that part of the structure which was found to be in a precarious condition.

3. By our order dated 24th June, 2005, we disposed of the petition in view of the statement of the first Respondent that the Petitioner's application for regularization would be disposed of within three months. No interim reliefs were granted pending the same. This Notice of Motion was filed on 5th August, 2005.

4. It is not possible to allow this Notice of Motion for several reasons. Firstly, the demolition is almost complete. The allegations that the upper floor still remains is ex-facie false as is evidenced by the photographs. The structure is not habitable at all. Further, the Petitioner's structure prima-facie is illegal. This is clear from the affidavits in reply filed by the Respondents. Even the conditions on which part of the plot was allocated, have been breached by the Petitioner in several respects.

5. In view of the affidavits in reply filed by the Respondents, it is not possible to grant any reliefs to the Petitioner on this Notice of Motion. We refrain from making further observations on the merits of

the case out of consideration for the Petitioner least, her application for regularization which is pending before the Respondents, is adversely affected thereby.

In the circumstances, the Notice of Motion is dismissed.

CHIEF JUSTICE

S.J. VAZIFDAR, J.